

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

**MORRIS LAMONTE MARSH v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Davidson County**  
**No. 2001-B-934 Cheryl A. Blackburn, Judge**

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**No. M2007-00432-CCA-R3-PC - Filed November 30, 2007**

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This matter is before the Court upon the State's motion to affirm the judgment of the post-conviction court by memorandum opinion pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. The Petitioner appeals the post-conviction court's dismissal of his petition for post-conviction relief based on its untimeliness. Upon a review of the record in this case, we are persuaded that the post-conviction court was correct and that this case meets the criteria for affirmance pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted and the judgment of the post-conviction court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**  
**Pursuant to Rule 20, Rule of the Court of Criminal Appeals**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

Morris LaMonte Marsh, Mountain City, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Lacy Wilber, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; Bret Gunn, Assistant District Attorney General; for the Appellee, State of Tennessee.

**MEMORANDUM OPINION**

The Petitioner is currently incarcerated serving two life sentences plus forty years. The Petitioner was originally convicted on four counts of felony murder, two counts of second degree murder, two counts of attempted second degree murder, and one count of aggravated assault. *State v. Morris LaMonte Marsh*, No. M2004-00854-CCA-R3-CD, 2005 WL 1950225, at \*1 (Tenn. Crim. App., at Nashville, Aug. 15, 2005), *perm. app. denied* (Tenn. Dec. 12, 2005). Two of the first degree felony murder convictions were merged, and the two second degree murder convictions were merged into the first two felony murder convictions. *Id.* Additionally, the aggravated assault conviction was

merged into one of the second degree murder convictions. *Id.* The Defendant filed a Rule 11 petition to the Tennessee Supreme Court, which was denied on December 12, 2005. This began the running of the one-year statute of limitations for post-conviction purposes. T.C.A. § 40-30-102(a) (2006). Thus, the Petitioner needed to file his petition, or deliver his petition “to the appropriate individual at the correctional facility within the time fixed for filing” by December 12, 2006. Tenn. Sup. Ct. R. 28 § 2(G). If the Petitioner failed to do so, he must have alleged one of the three exceptions to the statute of limitations:

- (1) The claim in the petition is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required. The petition must be filed within one (1) year of the ruling of the highest state appellate court or the United States supreme court establishing a constitutional right that was not recognized as existing at the time of trial;
- (2) The claim in the petition is based upon new scientific evidence establishing that the petitioner is actually innocent of the offense or offenses for which the petitioner was convicted; or
- (3) The claim asserted in the petition seeks relief from a sentence that was enhanced because of a previous conviction and the conviction in the case in which the claim is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid, in which case the petition must be filed within one (1) year of the finality of the ruling holding the previous conviction to be invalid.

T.C.A. § 40-30-102(b)(1)-(3) (2006).

The Petitioner’s petition is *dated* December 12, 2006, it was notarized on December 14, 2006, and ultimately stamped for filing on January 15, 2007. The January 15, 2007 filing is clearly outside the statute of limitations. Moreover, the Petitioner did not have his petition notarized until two days after the statute had run. Thus, even under *Butler v. State*, 92 S.W.3d 387, 389-90 (Tenn. 2002) (concluding an evidentiary hearing was required to determine whether the petitioner caused his petition to be delivered to the “appropriate individual” at the prison when there was an allegation that the petitioner delivered his petition over a month before the expiration of the statute of limitations), the Petitioner is not entitled to relief. The Petitioner has not alleged he delivered his petition to the “appropriate individual” at the prison before the expiration of the statute of limitations. Similarly, the Petitioner has not alleged his late petition falls into one of the enumerated exceptions to the statute of limitations. Thus, the Petitioner is not entitled to relief.

Accordingly, the State’s motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20, Rule of the Court of Criminal Appeals.

ROBERT W. WEDEMEYER, JUDGE